

Sociology 3395: Criminal Justice & Corrections
Class 15: Key Players in the Justice Process 1

* Today we will begin our look at the experiences/opinions key players in the criminal court system

(1) Brian Manarin (2004) The Role of the Prosecutor:

* Outlines decisions confronting prosecutors on a daily basis in a busy provincial court

* While earning their living in the courtroom, many important actions take place elsewhere (e.g. drafting documents, advice to police)

* Not openly partisan: goal is not to gain conviction, but to see a just result based on evidence presented (e.g. duty of disclosure)

* Three areas dealt with “during a normal week” in a Crown’s office:

- (1) Charge screening and disclosure;
- (2) Bail hearings;
- (3) Sentencing

* Charge screening and disclosure. Considerations:

- whether reasonable prospect of conviction
- whether in public interest
- whether proper charge laid
- whether investigation complete
- whether diversion should be offered

* Bail Hearings:

- Can be very challenging when court busy (e.g. Monday AM)

- Outcome of bail hearing often pivotal to case itself
- Onus on Crown to prove detention necessary (with exceptions)

- Considerations:

- (1) Whether detention necessary to ensure appearance in court
- (2) Whether detention necessary for protection/safety of public
- (3) Whether detention necessary to maintain confidence in the administration of justice under the circumstances

* Sentencing:

- a “troubling” experience: Crown’s reputation at stake
- need to balance need to appear “unconcerned” with forcefulness
- most hearings largely fact-generated: no 2 the same
- new conditional sentences controversial / some prosecutors object because of:

- (1) societal value systems;
- (2) lack of resources;
- (3) perception of “second class punishment; &
- (4) conditional sentences being used as bargaining chips in plea bargains

- yet prosecutors must professionally apply this law/ lead by example

* Ultimately: Crown prosecutors play a key role in making busiest courts function / upholding a cornerstone of adversarial process

* “Not always an easy task”

(2) Paul Burstein (2004):

The Importance of Being an Earnest Criminal Defense lawyer:

* Defense counsel often asked how they can work for someone they know is guilty. The following is Burstein's response

* But first, it is necessary to describe defense counsel's typical activities regarding:

- (1) The client at the police station;
- (2) Release of the client on bail;
- (3) Defenses
- (4) Preparing for trial
- (5) Constitutional Issues

* The client at the police station:

- police obliged to help detainee who asks for lawyer
- necessary to remind client of importance of right to silence
- not only the guilty confess/ provide information to skilled interrogators
- defense counsel must also help client build courage to remain silent when confronted by police

* Release of the client on bail:

- counsel must attempt to persuade police to release client
- if not, then find out when bail hearing scheduled
- counsel must help client find a surety
- counsel must also function as social workers/ counselors

* Defenses:

- next, counsel must consider whether client has a defense

- factual defenses: challenging the evidence
- legal defenses: was the accused's action criminal?
- to establish defenses, counsel must gather information from Crown, police reports, client, witnesses, etc.
- legal research also necessary before advising client
- client then presented with 2 options:

- (1) plead guilty in the hope of a lesser sentence; or
- (2) go to trial / fight the charges

- counsel must always get client's input before accepting/ rejecting plea bargains (their cost-benefit analysis is always different: but most accept)
- if client decides on trial, it will be scheduled

* Preparing for trial:

- much like producing a film or play: preparing an "innocence narrative" to compete with the Crown's "guilty narrative"
- not easy: much research / amateur sleuthing necessary
- examining/ assembling the "cast of characters" with limited investigative resources
- carefully planning cross-examination
- preparing diagrams/ photos/ exhibits to maintain jury's interest
- efficacy of the "production" depends on time invested in planning

* Constitutional issues:

- the outcome of some cases depends more on the law than the evidence (e.g. Morgentaler case)
- constitutional challenges significant (e.g. to Marijuana laws; prostitution laws)
- often requires much research/ study of new disciplines

* Back to major issue: why defend people who may well be guilty?

- increasing number of wrongful convictions
- CJS can't be allowed to cut corners like in some countries
- defense counsel fight arbitrary detention and imprisonment
- defending the "guilty" a necessary part of this
- basing our procedures on whether a person "bad" or "good" would lead to problems: either leads to an arbitrary, discretionary system, or determinations of who is responsible.
- in the latter case, either a similar system would arise, or uncomfortable questions would be asked about responsibility

**Judge David Cole (2004):
A day in the Life of a Provincial Court Judge:**

* Typical day in the life of a judge:

- Arrive at court to review the docket
- Paperwork on each case extensive / don't see until case heard

* After entering court:

- Dealing with duty counsel (who deal with unrepresented accused)
- Crown first checks on cases where status unclear
- Problems dealing with unrepresented accused/ inquiries re: pleas
- Many plead guilty despite having defenses to charge: conduct a "plea comprehension inquiry" before accepting vs. reschedule?
- Time allocation dilemmas/ efficiency issues / case priorities exacerbated by administrative overloads (14 v. 8 "official" hours)
- Problems in enforcing orders due to this

* Cases not completed on same day:

- For example, motions to exclude evidence/ Charter violations

require more time/ rescheduling / “arm-twisting” of counsel
-judges must take good notes for use at later date

* Scheduling problems:

- Reduced somewhat by aggressively pre-trying cases
- No more resources available in many cases
- Procedural slip-ups considered in this light / second-guessing counsel’s real motives / filing for future reference/ implications for justice

* Court clerk supposedly ensures documents brought to court / orders accurately recorded.

* Procedures to prevent typos/ inaccuracies result in large number of signatures needed each day / little chance to proofread

* Errors still get made / some don’t get noticed even with training

* Judges worry about making such errors given their heavy caseload

* Trial coordinators put more cases on docket than can be dealt with.

Results:

- Plea bargaining vs. pressure by community groups for harsher minimum sentences in certain offences
- Judges may not go along if they find bargains offensive, but usually go along

* More serious cases get more extensive treatment (e.g. violent young offenders):

- Questions of police action/ admissibility of evidence adjudicated
- Questions of witness cooperation/ parties testifying against each

- other in return for promises on charges
- Questions of which charges to proceed on
 - Meetings with counsel in chambers to discuss case/ range of potential sentences
 - Judge-shopping by counsel as part of pre-trial maneuvering
 - Formal submissions, pre-sentence reports, and victim impact statements given
 - Adjournments prior to adjudication of sentence

* These are some of the things a busy judge deals with day to day